NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. DONOVAN RAY BELONE, Defendant - Appellant.	No. 02-10503 D.C. No. CR-01-0541-RCB MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Robert C. Broomfield, District Judge, Presiding

Argued and Submitted October 10, 2003
San Francisco, California

Before: HUG, B. FLETCHER, and TASHIMA, Circuit Judges.

Donovan Ray Belone appeals his conviction for aggravated sexual abuse in violation of 18 U.S.C. §§ 1153 and 2241(c), and sexual abuse of a minor in violation of 18 U.S.C. §§ 1153 and 2243(a). We have jurisdiction under 28 U.S.C.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

§ 1291, and we affirm.[1]

The district court did not abuse its discretion by excluding the testimony of defense witness Dewayne Wilson as improper impeachment under Federal Rule of Evidence 608(b).[2] *See United States v. Ramirez*, 176 F.3d 1179, 1182 (9th Cir. 1999) ("an evidentiary ruling is reviewed for abuse of discretion"). Rule 608(b) provides that "[s]pecific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility . . . may not be proved by extrinsic evidence." Fed. R. Evid. 608(b). Prior to trial, Belone assumed that the government's witnesses would testify that Wilson was himself either a victim or witness of Belone's abuse. During trial, however, none of Belone's juvenile victims offered the anticipated testimony about Wilson. Thus, Belone offered Wilson's testimony "solely for the purpose of attacking the credibility" of the government's juvenile witnesses; as a result, the proffered testimony is extrinsic

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[1] Because the parties are familiar with the facts, we do not recite them here except as necessary to aid in understanding this disposition.

[2] Although initially excluded following a motion in limine, an additional defense witness, Nolan Anderson, was ultimately permitted to testify as an eyewitness to an act of sexual abuse alleged in Count 5 of the indictment.

impeachment evidence inadmissible under Rule 608(b). *United States v. Bosley*, 615 F.2d 1274, 1276 (9th Cir. 1980). Belone concedes that he had ample opportunity to challenge the juvenile victims' truthfulness on cross-examination. The district court did not abuse its discretion by excluding extrinsic impeachment testimony regarding Wilson.

There was, however, testimony about defense witnesses Darren Ayzie and Christopher Williams. Because their testimony would have impeached the government's witnesses by contradiction, it was not governed by Rule 608(b). *See United States v. Chu*, 5 F.3d 1244, 1249 (9th Cir. 1993) (holding that Rule 608(b) applies "where the only theory of relevance is impeachment by prior misconduct"). Even assuming, however, that the district court erred in excluding Ayzie and Williams' testimony under Rule 608(b), the error was harmless. We are convinced "it is more probable than not that the error did not materially affect the verdict." *United States v. Morales*, 108 F.3d 1031, 1040 (9th Cir. 1997) (en banc).

As for the redirect examination of expert witness Elaine Cusey, even assuming error in permitting such testimony, the error was harmless. *See United States v. Seschillie*, 310 F.3d 1208, 1214-16 (9th Cir. 2003) (stating and explaining applicable rule).

The judgment of conviction is

AFFIRMED.